

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

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AUG 21 1980

THE MAGNAVOX COMPANY, a corpora-)
tion, and SANDERS ASSOCIATES,)
INC., a corporation,)

Plaintiffs,)

v.)

UNIVERSAL RESEARCH LABORATORIES,)
INCORPORATED, a corporation,)
et al.,)

Defendants.)

Consolidated Civil

Action Nos.

77 C 3159

78 C 4951 ✓

78 C 5041 ✓

RESPONSE OF DEFENDANT SEARS, ROEBUCK AND CO.
TO PLAINTIFF'S INTERROGATORIES

Defendant Sears, Roebuck and Co. hereby responds
to Plaintiffs' interrogatories as follows:

1. Does defendant contend that the patent in suit or any of claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 54, 55, 57 or 60-64 thereof is invalid, void, or unenforceable for any reason under 35 U.S.C. §§ 102 or 103? If so, state each and every reason, ground, or basis known to defendant to support each such contention and fully identify each and every item or prior art upon which defendant bases that contention.

Answer to Interrogatory 1. Yes. The reasons, grounds and bases known to Defendant and the prior art which Defendant may rely on in support of its contentions are the reasons, grounds, bases and items of prior art which were relied upon by the Defendants in consolidated Civil Action

Nos. 74 C 1030, 74 C 2510, 75 C 3153 and 75 C 3933. Another prior art patent which will be relied upon by Defendant at trial is Fritz Spiegel U.S. Patent No. 3,135,815, issued June 2, 1964. Defendant intends to pursue further discovery in order to ascertain further information relevant to this interrogatory.

2. Does defendant contend that the patent in suit or any of claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 54, 55, 57 or 60-64 thereof is invalid, void or unenforceable for any reason under 35 U.S.C. §103? If so, state each and every reason, ground, or basis known to defendant to support each such contention including a statement of what defendant contends is the art to which the subject matter patented in the patent in suit pertains and what defendant contends was the level of skill of a person of ordinary skill in that art at the times the invention of the patent in suit was made and the application for the original patent in suit was filed.

Answer to Interrogatory 2. Yes. See answer to Interrogatory 1, above. The subject matter patented in the patent in suit pertains to many arts, including but not limited to video games, video displays, computers, educational games and electronics. The level of skill of a person of ordinary skill in those arts at the times the invention of the patent in suit was made and the application for the original patent in suit was filed includes but is not limited to all of the subject matter disclosed in the items of prior art referred in the answer to Interrogatory 1, above.

3. Does defendant contend that the patent in suit or any of claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 54, 55, 57 or 60-64 is invalid, void or unenforceable for any reason under 35 U.S.C. §112? If so, state each and every reason, ground, or basis known to defendant to support each such contention, including a statement of each and every alleged deficiency or omission in the written description of the invention in the patent in suit and why such alleged deficiency or omission would prevent any person skilled in the art to which the invention of the patent in suit pertains or is most nearly connected from making and using the same, each mode of carrying out the invention of the patent in suit which was contemplated by the inventor named in the patent as better than the mode or modes set forth therein, and each ambiguity, unclarity, or other manner in which the claims of the patent in suit fail to particularly point out or distinctly claim the subject matter which the inventor regarded as his invention, and identify every act, fact, or occurrence relied upon by defendant to support each such reason, ground or basis.

Answer to Interrogatory 3. Yes. The claims are unduly multiplied and the language of the claims is unclear, rendering it difficult, if not impossible, to determine what is intended to be covered by the claims. Defendant intends to pursue further discovery to obtain additional information which may be relevant to this interrogatory.

4. Does defendant contend that the patent in suit or any of claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 54, 55, 57 or 60-64 is invalid, void, or unenforceable for any reason under 35 U.S.C. §§ 251 or 252? If so, state each and every reason, ground, or basis known to defendant to support such contentions and identify every act, fact, or occurrence relied upon by defendant to support each such reason, ground, or basis.

Answer to Interrogatory 4. Yes. Defendant intends to pursue discovery in order to obtain information which may be relevant to this interrogatory.

Prior to the filing of the application to reissue

U.S. Patent No. 3,659,284, and subsequent thereto, certain interviews were conducted with the Patent Examiner (David L. Trafton) by James T. Williams and by Richard Seligman, a patent attorney for Sanders Associates, Inc. Although Messrs. Williams and Seligman were aware of the prior art "Space War" video game, they did not inform the Patent Examiner of this pertinent prior art. Had the Patent Examiner been aware of this prior art, it is submitted that the reissue application which matured to the reissue patent in suit would not have been allowed.

5. Does defendant contend that the patent in suit or any of claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 54, 55, 57, or 60-64 thereof is or at any time was invalid, void, or unenforceable against defendant or others for any reasons other than those stated in defendant's responses to interrogatories 1-4 hereof? If so, state in detail each and every reason, ground, or basis known to defendant to support each such contention, and identify every act, fact, or occurrence relied upon by defendant to support each such reason, ground, or basis. As to defendant Sears, its response to this interrogatory should include, but not be limited to, the requested information as to each matter alleged in or supporting any matter alleged in paragraph 17 of its answer to the complaint in this action.

Answer to Interrogatory 5. Yes. In or about 1962, a video game known as "Space War" was constructed and operated at Massachusetts Institute of Technology. This computer-assisted video game, which was displayed on a cathode ray tube, was also constructed and operated in 1963 or 1964 at Stanford University. The Stanford "Space War" video game was developed by John B. Sauter, who is believed

to presently be an employee of Sanders Associates, Inc. James T. Williams, one of the present attorneys for Plaintiffs, was a student at Stanford University during the period September, 1960 to June, 1964 and at that time he acquired knowledge of the "Space War" video game.

In the "Space War" video game, a celestial system is displayed with the sun in the center and scores of stars in the background. Two individual spaceships, equipped with nuclear warheads, are controlled by different operators. The object of the nuclear war is to maneuver the spacecraft into position to fire missiles that will demolish the other spaceship. When either spaceship is struck by a missile, it will appear to explode and the war game ends. As the two spaceships orbit the sun, each ship can be pulled by gravitation into the sun where it will crash and dissolve in "flames". The orbiting spaceships have four controls -- forward thrust, fire control, left and right. There is also a doomsday device on each ship -- if the pilot does not destroy his enemy within two minutes, his ship will explode.

The application which matured to the original patent in suit (3,659,284) was filed May 27, 1969. John B. Sauter, James T. Williams, Louis Etlinger and other agents of Sanders Associates, Inc. were aware that the "Space War" video game was prior art with respect to the invention of

the patents in suit. Notwithstanding such knowledge, Louis Etlinger prosecuted the application which matured to U.S. Patent No. 3,659,284 without ever informing the Patent and Trademark Office of the existence of the "Space War" video game. The "Space War" video game was far more pertinent than any of the references considered by the Patent Examiner. Had the Patent Examiner been aware of the prior art "Space War" video game, it is submitted that the Rusch application which matured to the original patent in suit would not have been allowed.

On April 25, 1974, an application to reissue U.S. Patent No. 3,659,284 was filed. Prior to the filing of this reissue application and subsequent to the filing of this reissue application, certain interviews were conducted with the Patent Examiner (David L. Trafton) by James T. Williams and by Richard Seligman, a patent attorney for Sanders Associates, Inc. Although Messrs. Williams and Seligman were aware of the prior art "Space War" video game, they did not inform the Patent Examiner of this pertinent prior art. Had the Patent Examiner been aware of this prior art, it is submitted that the reissue declaration which matured to the reissue patent in suit would not have been allowed.

By not advising the Patent and Trademark Office of pertinent prior art of which counsel for Plaintiffs were

aware (such counsel including Louis Etlinger, Richard I. Seligman, James T. Williams and possibly others), the Patent Examiner was misled into believing that certain subject matter was patentable when in actuality it was not patentable. The failure to advise the Patent and Trademark Office with respect to this very pertinent prior art is submitted to have been willful and constitutes fraud, thereby rendering the patents in suit unenforceable and invalid.

Defendant intends to pursue further discovery to obtain additional information relative to this interrogatory.

6. Identify each and every television game product which defendant has manufactured, used, and/or sold by stating its model or type number, stating the date on which defendant first began to manufacture and/or sell that model or type number, stating the date on which defendant last manufactured and/or sold that model or type number, identifying the manufacturer(s) of the party(ies) from whom defendant purchased that model or type number, identifying the present employees of defendant having the greatest knowledge of the operation of the electrical circuitry of that model or type number, identifying the person or persons responsible for deciding which game or games were included in that model or type number, and describing the game or games played thereon as they appear to the player. Only the model or type number need be supplied as to television game products which defendant knows to be either products of plaintiff Magnavox or covered by a license or settlement agreement with Magnavox under the patent in suit.

Answer to Interrogatory 6. The television game products which Defendant Sears has sold which are not products of Magnavox, Atari or Coleco are as follows:

<u>MODEL NO.</u>	<u>DESCRIPTION</u>	<u>MANUFACTURER</u>
99733	HOCKEY TENNIS II	A P F
99705	TENNIS CATCH	TELE - MATCH
99747	SPEEDWAY	UNIVERSAL RESEARCH LABS
99731	HOCKEY JOKARI	A P F
99734	HOCKEY TENNIS III	A P F
99722	HOCKEY TENNIS	A P F
99793	HOCKEY TENNIS III	A P F COMBINATION OF 99734 AND A/C ADAPTER

It is believed that the dates on which Defendant began to sell and last sold various models of television games can be ascertained from documents which Defendant Sears is willing to produce.

The employee of Defendant Sears having the greatest knowledge of the electrical circuitry is Robert Jandeska. The person or persons responsible for deciding which game or games were included in the model or type number are Tom Quinn from January, 1974 to June, 1977; Rick LoPossa from June, 1977 to June, 1978 and from February, 1979 to June, 1979; Jerry Coll from June, 1978 to February, 1979; and Ronald Stringari from June, 1979 to the present.

The game or games played on the various television games sold by Defendant Sears are described in the Owner's Manuals which Defendant Sears is willing to produce for inspection by Plaintiffs.

7. Does defendant contend that the manufacture and/or sale of any television game product identified in defendant's response to interrogatory 6 hereof is not an act of infringement of, contributory infringement of, or inducement to infringe any of claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 54, 55, 57 or 60-64 of the patent in suit for any reason other than the alleged invalidity or unenforceability of the claim or the patent in suit? If so, state specifically with respect to each such claim each and every reason, ground, or basis known to defendant to support such contention including a statement of any language of the claim which defendant contends is not met by the television game product, and if defendant asserts there is any estoppel with respect to the stated language, specifically identify each and every act, fact, or occurrence and each limitation, interpretation, admission, representation, proceeding, argument, amendment, or other item which defendant contends resulted in any such estoppel. As to defendant Sears, its response to this interrogatory should include, but not be limited to, the requested information as to each matter alleged in or supporting the matter alleged in paragraph 16 of its answer to the complaint in this action. Defendant need not respond to this interrogatory as to television game products which defendant knows to be either products of plaintiff Magnavox or covered by a license or settlement agreement with Magnavox under the patent in suit.

Answer to Interrogatory 7. Yes. Because of the undue multiplicity of the claims of the patents in suit and as a result of the indefiniteness of the claims of the patent in suit, counsel for Defendant Sears is unable to ascertain the precise scope of the claims of the patent in suit. However, counsel for Plaintiff Magnavox, including Theodore Anderson and James T. Williams, have informed counsel for Defendant that the patents in suit are not intended to cover video games in which a first displayed symbol coincides with a second displayed symbol causing one of the displayed symbols to either explode or evaporate

from display. Certain of Defendant Sears' video games have this characteristic.

Defendant intends to pursue further discovery in order to obtain additional information which may be relevant to this interrogatory.

8. Identify each person whom defendant expects to call as an expert witness at the trial in this civil action and as to each expert witness state the subject matter or subject matters on which he is expected to testify, the substance of the facts and opinions as to which the expert is expected to testify, and summarize the grounds for each such opinion; and identify each person whom defendant has retained or specially employed in anticipation of this civil action and/or in preparation for trial in this civil action.

Answer to Interrogatory 8. Defendant has not yet selected its expert witnesses for the trial in this action.

9. If defendant contends that plaintiffs are not entitled to recover from defendant for infringement of the patent in suit for any reason, ground, or basis not stated in defendant's response to interrogatories 1-5 and 7 hereof, state fully and explicitly each such other reason, ground, or basis and identify each document, act, fact, or occurrence relied upon by defendant to support each such reason, ground, or basis.

Answer to Interrogatory 9. Defendant intends to pursue further discovery in order to obtain additional information which may be relevant to this interrogatory.

10. Has defendant given or received any indemnity agreements relating to or including claims or charges of patent infringement of the patent in suit? If so, and separately as to each such indemnity agreement, identify the parties other than defendant to that agreement; state the date such indemnity agreement was entered into and the dates, if any, such indemnity agreement was terminated or

modified; state the full and complete terms of such indemnity agreement and any modifications thereto.

Answer to Interrogatory 10. Yes. Copies of the pertinent portions of such indemnity agreements will be produced for inspection by counsel for Plaintiff once a suitable protective order is entered.

11. Identify each and every document or thing the production of which is requested in plaintiffs "Request for Production to Sears and Montgomery Ward" served herewith which defendant refuses to produce for inspection and copying by plaintiffs and state the reason for that refusal and all facts known to defendant which justify that refusal.

Answer to Interrogatory 11.

(a) Sales contracts with price terms and the like between Defendant and its suppliers. These documents are strictly confidential and cannot be shown to a competitor. Further, these documents contain material which is not relevant to this action prior to a decision regarding infringement liability.

(b) June, 1978 Consumer Returns Study. This document concerns highly confidential material which cannot be disclosed to a competitor.

(c) Cost specification sheets, in looseleaf book. These documents are strictly confidential and cannot be shown to a competitor. Further, these documents contain material which is not relevant to this action prior to a decision regarding infringement liability.

(d) Market research booklets. These documents concern highly confidential material which cannot be disclosed to a competitor.

(e) Foster and Sullivan study of coin-operated electronic game market. These documents concern highly confidential material which cannot be disclosed to a competitor.

(f) Internal memoranda concerning marketing strategy. These documents are strictly confidential and cannot be shown to a competitor.

(g) Marketing plans documents. These documents are strictly confidential and cannot be shown to a competitor.

(h) Letters to and from suppliers concerning confidential cost information. These documents concern highly confidential material which cannot be disclosed to a competitor.

STATE OF ILLINOIS)
COUNTY OF COOK) SS

Lillian Krumes, being first duly sworn,
deposes and says that she is an officer of Defendant and that
she believes the foregoing answers to be true.

SEARS, ROEBUCK AND CO.

By Lillian Krumes
Assistant Secretary

Subscribed and sworn to before me, a Notary Public,
this 5th day of August, 1980.

Ronald Olby
Notary Public

My Commission Expires December 18, 1980.